

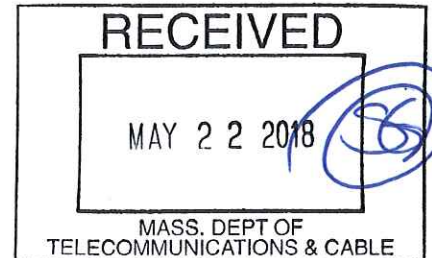
THE COMMONWEALTH OF MASSACHUSETTS  
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May 22, 2018

Shonda D. Green, Secretary  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 820  
Boston, Massachusetts 02118-6500



**RE: Petition of the State 911 Department For Approval of 2018 Fiscal Year  
Expenditures and Adjustment of the Enhanced 911 Surcharge,  
D.T.C. 18-2**

Dear Secretary Green:

On April 10, 2018 the State 911 Department ("911 Department") filed with the Department of Telecommunications and Cable ("DTC") a Petition to approve proposed expenditures related to the provision of enhanced 911 service for Fiscal Year 2018 and proposed grant levels for Development Grants and for Incentive Grants. The Petition also seeks to increase by 50 percent the current enhanced 911 monthly billing surcharge of \$1.00 per subscriber/end user of communications service to \$1.50 per line. The Petition claims that the requested increase is necessary to support a revised Fiscal Year 2018 budget for the 911 Department of \$171,224,995.

The DTC on April 18, 2018 duly noticed its investigation of the Petition, inviting public comment on the Petition. This letter serves as the Initial Comments of the Attorney General's Office of Ratepayer Advocacy ("AGO"). The AGO represents the interests of millions of subscribers of communications services in the Commonwealth, both wireline, wireless, prepaid and IP-enabled voice communications that are subject to the billing surcharge to support enhanced 911 service.

**I. Standard of Review**

The DTC's role in reviewing and approving the 911 Department's request to increase expenditures and allocations is well-defined. The DTC examines whether such expenditures are, or will be, prudently incurred. *See e.g., Petition of the State 911 Department to Adjust Enhanced 911 Surcharge*, D.T.C. 15-2, Order at 4-5 (June 18, 2015). In doing so, however, "[t]he DTC will not simply substitute its own judgment for that of the 911 Department as to what is reasonably required to perform the 911 Department's statutory obligations, and the 911 Department has the authority to determine which categories of equipment, training, and support expenditures it will

submit to the DTC for approval.” *Id.*, at 5. The 911 Department’s determination of what is required will be affirmed by the DTC, and such expenditures deemed prudent, *provided* “they are necessary for the funding of the 911 Department’s provision of E911 services and programs ... and at the same time maintain a stable surcharge level.” *Id.*, at 6. Thus, the DTC has repeatedly affirmed:

The DTC’s mandate is to maintain a reasonable, stable surcharge in order to protect the interests of communications service ratepayers “and to serve as a counterweight to the 911 Department’s authority.”

*Id.*, at 6, quoting *Petition of State 911 Department for Approval of Fiscal Year 2012 Incentive Grant, Regional Communications Center Category Amount*, D.T.C. 11-2, Order at 4-5. *See also* *Petition of State 911 Department for Approval of Fiscal Year 2011 Development Grant Amount and Fiscal Year 2010 Expenditures*, D.T.C. 10-01 at 6-7 (Apr. 5, 2010) (that the “necessity” of 911 expenditures cannot be viewed in a vacuum, but in relation to total cost and to the DTC’s obligation to assure a reasonable, stable level of surcharge). Central to the DTC’s role, however, is the DTC’s determination that “the 911 Department’s expenses [are] associated with the provisioning of E-911 Services and programs ....” D.T.C. 15-2 at 7.

## **II. The Need for a 50 Percent Increase in the Surcharge to Fund Enhanced 911 Service Must Be Clearly Established**

A significant driver of the 911 Department’s request to increase the enhanced 911 monthly billing surcharge are future, prospective expenditures to upgrade and improve the Commonwealth’s Interoperable Radio System (“CoMIRS”). *Petition* at 14-15. Absent the 911 Department’s projected inclusion of \$25 million, annually, for future CoMIRS upgrade costs, in the projected annual budgets for Fiscal Years 2019 through 2023, it is doubtful any further increase to the enhanced 911 monthly surcharge would be necessary.<sup>1</sup>

The AGO, like the DTC, does not see its primary role under the statute in this proceeding to “second-guess” the 911 Department on the selection of equipment, training or programs appropriate to provide enhanced 911 service. The nature of such expenses, however, must fall within the limits of the 911 Department’s delegated powers under the statute. G.L. c. 6A, § 18B (d) defines the 911 Department’s role “[to] coordinate and effect the implementation of enhanced 911 service and administer such service in the Commonwealth.” Towards that end, the 911 Department is expressly authorized under Section 18B (f) to disburse funds from the Enhanced 911 Fund (collected by surcharge pursuant to Section 18H). Subsection (f) of Section 18B lists, with particularity, the categories of expenditures in furtherance of enhanced 911 service that the 911 Department may lawfully incur and/or reimburse through the Fund. Accordingly, before the DTC may approve a prospective increase in the enhanced 911 billing surcharge, the 911 Department must establish, and the DTC must affirm, that all present and proposed expenditures fall within the proscribed category limits of Section 18B.

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<sup>1</sup> Appendix A to the *Petition* shows the Enhanced 911 Fund began fiscal year 2018 with a surplus balance of \$122 million; projects surcharge revenues for FY 2018 (at the current \$1.00 per line rate level) of \$103 million; and is requesting approval of a final FY 2018 budget of \$171,224,995. Thus, the 911 Department projects it will begin fiscal year 2019, at existing surcharge rate levels, with a net *surplus* of \$55 million. *See* *Petition*, Appendix C, line 1, column 2).



From the 911 Department's Petition it is not apparent what function the projected CoMIRS upgrade costs perform in the provision of enhanced 911 service. Enhanced 911 service is defined in Section 18A as:

consisting of communications network, database and equipment features provided for subscribers or end users of communication services enabling such subscribers or end users to reach a P[ublic] S[afety] A[nswering] P[oint] by dialing the digits 911 ... that directs calls to appropriate PSAPs based on selective routing and provides the capability for automatic number identification and automatic location identification.

(Emphasis supplied). The 911 Department's funding request in this proceeding thus raises the factual issue whether planned CoMIRS expenditures facilitate the delivery of a communications call dialed as "9-1-1" to the appropriate PSAP, or instead support the rendition of emergency response services, once the enhanced 911 service terminates the 9-1-1 call at the PSAP. Such a determination will be critical in establishing any need for further 911 surcharge increases.

Thank you for the opportunity to comment on this Petition and the AGO intends to participate further in this proceeding, as appropriate.

Respectfully submitted,

MAURA HEALY  
ATTORNEY GENERAL

*/s/ Donald W. Boecke*

Donald W. Boecke  
Assistant Attorney General

cc: Mark Merante, Hearing Officer  
Service List

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

**Petition of the State 911 Department  
For Approval of Fiscal Year 2018 Expenditures and  
Adjustment of the Enhanced 911 Surcharge**

**D.T.C. 18-2**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, dated at Boston, Massachusetts this 22nd day of May, 2018.

/s/ Donald W. Boecke  
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